

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal
Complaint of Rod Stephens
against Rocky Mountain Power

Docket No. 14-035-52

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Tuesday, September 16, 2014

TIME: 9:04 a.m.

REPORTED BY: Scott M. Knight, RPR

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1 Hearing Proceedings

2 September 16, 2014

3 PROCEEDINGS

4 THE HEARING OFFICER: Good morning,
5 everyone. I'm Melanie Reif, administrative law judge with the
6 Utah Public Service Commission. And this morning is the
7 hearing In the Matter of the Formal Complaint of Rod Stephens
8 Against Rocky Mountain Power. This hearing is scheduled for
9 Docket 14-035-54. And this is the date and time for said
10 hearing. Wish to, once again, welcome everyone this morning.
11 And if we could start by taking appearances, starting with the
12 Complainant first.

13 MR. BINGHAM: Yes, Your Honor. Jared Bingham
14 on behalf of the Complainant, Rod Stephens.

15 THE HEARING OFFICER: Thank you, Mr. Bingham.
16 If I could please ask you to double-check that your microphone
17 is on. And if it is on, if you could kindly bring it a little closer to
18 you.

19 MR. BINGHAM: I apologize. It wasn't on. I
20 thought I saw a green light, but it was brighter when I first
21 pushed.

22 THE HEARING OFFICER: Okay.

23 MR. BINGHAM: I'll just do that again. It's Jared
24 Bingham on behalf of the Complainant, Rod Stephens.

25 THE HEARING OFFICER: Thank you very much.

1 MS. HOGLE: Good morning, Your Honor. My name
2 is Yvonne Hogle. And I am here on behalf of Rocky Mountain
3 Power. With me today is Mr. Rob Stewart, who is--will be
4 testifying on behalf of the company. Thank you.

5 THE HEARING OFFICER: Thank you.

6 Mr. Bingham, this is your client's complaint, so you
7 will typically go first. And, so, please--you have the floor.

8 MR. BINGHAM: Okay. Thank you, Your Honor.
9 Really, briefly just by way of an opening statement, for lack of a
10 better way, maybe to paint a picture of why we believe we're
11 here: I think factually there's not a whole lot of duty over the
12 facts--and we'll get a chance to go through those through
13 testimony--but it really boils down to an interpretation of the
14 public--Rocky Mountain Power's Electric Service Regulation No.
15 12, and in particular, Sections 2(a) and 2(e).

16 What we intend to show today is that 2(e) of that
17 regulation is applicable and should be applied in this case. We'll
18 leave it at that. And maybe at the end summarize it and try to
19 bring in some of the facts and try to show why that's the case.
20 Like I said beforehand, our only witness will be the
21 Complainant, who will provide testimony.

22 THE HEARING OFFICER: Okay. Ms. Hogle, do
23 you wish to make an opening statement this morning?

24 MS. HOGLE: Very briefly. Thank you very much.
25 Rocky Mountain Power's position, as you know, is that Tariff

1 Schedule--or Electric Service Regulation No. 12, specifically
2 2(e), does not apply to Mr. Stephens. It is very clear from the
3 language that for him to avail himself of that subsection of
4 Regulation 12, that there is secondary service available at the
5 lot line. The facts of the case show that there is no secondary
6 service available at the lot line, and therefore, Rocky Mountain
7 Power's motion to dismiss should be granted.

8 Thank you.

9 THE HEARING OFFICER: Thank you, Ms. Hogle.

10 Mr. Bingham.

11 MR. BINGHAM: If we may, we'll call Rod Stephens.

12 THE HEARING OFFICER: Mr. Stephens, good
13 morning. You're welcome to come up here to testify. And before
14 you take a seat, I'll swear you in.

15 THE WITNESS: Yes, ma'am.

16 THE HEARING OFFICER: And if you kindly raise
17 your right hand. Do you swear that the testimony you give today
18 will be the truth?

19 THE WITNESS: Yes, I do.

20 THE HEARING OFFICER: Thank you very much.
21 Please have a seat. And if you could situate the microphone in
22 front of you so as to pick up your voice--

23 THE WITNESS: Okay.

24 THE HEARING OFFICER: --as well as possible.

25 ROD STEPHENS, being first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY-MR.BINGHAM:

4 Q. Would you please state your name for the record?

5 A. Rod Stephens. S-T-E-P-H-E-N-S.

6 Q. Thank you. And just for a matter of introduction,
7 where do you live at?

8 A. I live at 1114 North Morgan Valley Drive, Morgan,
9 Utah.

10 Q. And how long have you lived there?

11 A. Since the end of April of this year.

12 Q. And this residence you live at, this is a residence
13 that's in question in this case, correct?

14 A. That is correct.

15 Q. Okay. And who is your wife?

16 A. Pam Stephens.

17 Q. And she's here with us today, correct?

18 A. She is.

19 Q. Really quick, let's--I'm going to hand you what we
20 marked as Exhibit 1--and I apologize. Some of the quality isn't
21 the best, but it's really for purpose of illustration to show kind of
22 what we're talking about.

23 THE HEARING OFFICER: Do you have a copy for
24 the court reporter?

25 MR. BINGHAM: I can give him this one. We may

1 have to shuffle those around, so if he needs to look at it . . .

2 BY MR. BINGHAM:

3 Q. So, this picture--can you describe what's in this
4 picture?

5 A. Yeah. You'll see two power poles along by the
6 road. One does have a transformer on it. And, then, from
7 there, you'll see a power pole that does not have any hookup to
8 that transformer. Plus, my house in that picture. And then, of
9 course, that's showing a picture of Lot 1, which is my house.
10 Lot 2 and 3 are consecutive as you look through the picture.

11 Q. The taller power pole, the one that has the
12 transformer on it, how long has that pole been there?

13 A. Long before I was born.

14 Q. Was it there before you purchased the lot?

15 A. That power pole--

16 Q. Yeah.

17 A. --with the transformer on it? Oh, absolutely.

18 Q. That particular transformer?

19 A. Oh, no. That transformer's been replaced. I paid
20 to have that transformer replaced, but prior to that, there was a
21 10kVA transformer on it. The one you see in the picture is a
22 25kVA.

23 Q. But that pole was in existence before you
24 purchased the lot.

25 A. Yes.

1 Q. Okay. And the road that you can kind of make out
2 on there, what's the name of that road?

3 A. That's Morgan Valley Drive.

4 Q. Okay. So, why was--what's the purpose of the
5 second pole, the shorter one?

6 A. In--when my home was being built, Rocky Mountain
7 Power requires that temporary power be drawn from that
8 transformer, so it goes into that pole that has its own meter box,
9 I guess. And that runs--so, we had to draw power from Rocky
10 Mountain Power, from that 10kVA transformer, to that second
11 pole that you see there. Then, from there, it was ran--or the
12 power could be ran to my house to service my house and build
13 it.

14 Q. Who installed that second pole?

15 A. The contractor installed the pole.

16 Q. Okay.

17 A. But Rocky Mountain Power had to do the hookup
18 for that second pole.

19 MR. BINGHAM: Okay. So, now, Exhibit 2--and if
20 we could, we'll have him look at it and pass it over the reporter.

21 THE HEARING OFFICER: Yeah. I was just going
22 to suggest that for purposes of the record, we do want to make
23 sure the court reporter gets a copy.

24 MR. BINGHAM: Definitely.

25 THE HEARING OFFICER: And we can take care of

1 that at the end.

2 MR. BINGHAM: The ones he has can go to the
3 reporter, but he'll need to look at this one, so here's what we
4 marked as Complainant's Exhibit 2.

5 BY MR. BINGHAM:

6 Q. Can you tell us what this is, Rod?

7 A. Yeah. This is the plat for Mack's Place Subdivision
8 approved by Morgan County.

9 Q. Okay. So, you've already said this is the name of
10 the subdivision is Mack's Place.

11 A. Yes. He was the landowner of those three lots
12 prior to him passing. And then, his son, Brad, subdivided that,
13 put it in his father's name.

14 Q. What's Brad's name?

15 A. Brad Peterson.

16 Q. So, Brad Peterson is a developer.

17 A. Yes.

18 Q. What date was this subdivision approved by Morgan
19 County?

20 A. It was in May 16, 2013.

21 Q. And that's when it was recorded with the county.

22 A. That's when it was recorded with the county.

23 Q. And your lot is which one?

24 A. My lot is Lot 1.

25 Q. Okay. And that pole that--the larger pole that had

1 the existing 10kVA transformer on it, where was it at on that--

2 A. It sits on the right-of-way just off of Morgan Valley
3 Drive on my property.

4 Q. Okay. I want you to--I want to direct your
5 attention--and I apologize, this is pretty small print, so if you
6 can't read it, we can provide an electronic copy that can be blow
7 up. But in the center there, I've highlighted for you. Under
8 "General Notes," can you tell us what it says, that very last line
9 about utilities?

10 A. Yes. It says, "Utilities: Power, gas, telephone are
11 available on Morgan Valley Drive."

12 Q. I'm going to hand you what we marked as Exhibit 4.
13 Hand the exhibit to you--to the reporter.

14 Okay. Can you tell us what this is, Rod?

15 A. Yeah. This came from Rocky Mountain Power. It
16 just shows the lot and where that 10kVA transformer is. It
17 shows they want to install a 25kVA transformer to my house.

18 Q. Okay.

19 THE HEARING OFFICER: Mr. Bingham?

20 MR. BINGHAM: Yes.

21 THE HEARING OFFICER: If you would, please--I
22 could do this--

23 MR. BINGHAM: Sure.

24 THE HEARING OFFICER: --but I think it would be
25 easier for you: Could you help situate me as to what I'm looking

1 at?

2 MR. BINGHAM: Sure.

3 THE HEARING OFFICER: And I think you can do it
4 with the assistance of your witness.

5 MR. BINGHAM: Okay. As regarding this specific
6 map?

7 THE HEARING OFFICER: Regarding what we're
8 looking at where his lot is located, what--
9 where is the transformer that's being proposed.

10 BY MR. BINGHAM:

11 Q. Okay, Rod. Can you--for purposes of clarification,
12 on this particular map from Rocky Mountain Power or
13 PacifiCorp, where is your lot on this map?

14 A. My lot--you'll see, like, a little number "1" if you
15 were to turn it on its side. It's where the arrow comes into the
16 circle. It's got a "1" and a circle around it. And I don't
17 understand, you know, all of their markings on here. It's where
18 it says, "Remove 10kVA transformer. Install 25kVA transformer.
19 Install service riser unit. Install 150 feet No. 4/0 service and
20 meter."

21 So, where that is pointing, that's that power pole
22 that's in question that sits on the easement, which I believe is
23 that red line you see that runs through Morgan Valley Drive, that
24 must being the existing power line. And, then, the transformer
25 in question is pointing to that particular pole that sits on my lot.

1 MR. BINGHAM: Okay. Is that sufficient, Your
2 Honor?

3 THE HEARING OFFICER: Yes. Please continue.

4 BY MR. BINGHAM:

5 Q. We're going to jump out of order on our exhibit
6 numbers and number this one last. I'm going to hand you what's
7 been marked as Exhibit No. 9. Exhibit No. 3. Okay. Rod, can
8 you explain what this exhibit is?

9 A. Yeah. This is an email that I received from Autumn
10 Braithwaite, a Rocky Mountain Power employee, where you'll
11 notice in that very top paragraph she writes, "The transformer
12 currently in place is a 10kVA transformer currently loaded at 80
13 percent."

14 Q. Can you give us some context as to what was
15 behind that email, why she sent that to you?

16 A. Yeah. This was based on my original complaint.
17 This was before it was made an informal complaint--or excuse
18 me. This was at the informal complaint level before it became
19 formal, when we discussed back and forth the elements of my
20 complaint. And she was simply stating that it is loaded 80
21 percent, that that transformer obviously would not be able to
22 handle a load of my home plus the home across the street.

23 Q. So, that exist--the prior 10kVA transformer--why
24 was it there in the first place?

25 A. It was servicing Brad Peterson's home, which is

1 directly across the street from my lot.

2 Q. Okay. So, does he know basically the same, that
3 that 10kVA wasn't large enough to handle capacity for both
4 homes?

5 A. That is correct.

6 Q. Yours and his.

7 A. That's true.

8 Q. And they were wanting to upgrade it to a 25kVA.

9 A. Yes. And just to give a little further background: I
10 said it was his home. He also has his barn tied into that home.
11 So, it's servicing those two things.

12 Q. Okay. So, I'm going to hand you Exhibit 4.

13 Okay. Go ahead and explain to us what this is.

14 A. I picked this up from Morgan County. This is the
15 letter authorizing Brad to have power to his lot, that they would
16 provide power to his lot. The county required this before they
17 would approve the subdivision.

18 Q. So, you got this letter from Morgan County.

19 A. Yes.

20 Q. Okay.

21 A. It's date stamped. It's pretty hard to see on here,
22 but it's February of 2013.

23 Q. Okay. So, in this letter, is there anywhere that it
24 references the fact that this is a subdivision?

25 A. Yes. It says, "Rocky Mountain Power will supply

1 power to property (Mack's Place, three lot subdivision)"

2 Q. But this is addressed to the developer, correct?

3 A. Yes, to Brad Peterson.

4 Q. So you, as a single-lot applicant, what does it tell
5 you you're required to do?

6 A. It says, "All single-lot applicants will be subject to
7 the line extension rules and Regulation 12."

8 Q. And what did you understand that to mean?

9 A. That through that tariff, that all of those regulations
10 apply to me, specifically that rule in question, Rule 2(e).

11 Q. So, this letter's addressed to Brad Peterson, a
12 developer. Did you ever ask him about power to the lot?

13 A. Yeah. When I started having problems with Rocky
14 Mountain Power on the hooking that up about having power to
15 my lot, he pointed to the pole on my lot and said, There's the
16 power right there. It's on your lot. He said, You have a
17 transformer and that power's on your lot. He said, Hook your
18 house up to that power pole.

19 Q. Okay. I'm going to show you what's been marked
20 as Exhibit 5. This one's several pages. Okay, Rod. If you
21 could explain what this exhibit is.

22 A. This is a contract that Rocky Mountain Power sent
23 me, what they wanted me to pay to have the power ran to my
24 lot. You'll see that it says \$7,540 or a contract administration
25 credit for \$7,290. That's what they originally wanted me to pay.

1 Q. What was the date of that?

2 A. February 7, 2014, is when this was mailed to me.

3 Q. Okay. Now, on--I think it's addressed to Pamela
4 Stephens.

5 A. Yes. Excuse me. To my wife, Pam Stephens.

6 Q. For purposes of what we're here for today, it's both
7 your homes, correct?

8 A. Yes.

9 Q. The home belongs to both of you.

10 A. Yes.

11 Q. Okay. Now, I'm going to hand you Exhibit 6. So,
12 now, tell us what this exhibit is.

13 A. This is a new contract amount, significantly lowered
14 amount, for \$5,468 or a contract administration credit for
15 \$5,218.

16 Q. And what's the date of this contract?

17 A. February 12, 2014.

18 Q. And what happened? Why was there this drop in
19 price?

20 A. Because when I saw \$7,540, I went through the
21 roof and I actually called Mr. Galvez, who wrote the letter, and I
22 left a message on his voicemail, something to the fact this must
23 be a joke because I find this ridiculous. A couple of days later
24 he called back up and they lowered the price \$2,000.

25 Q. Did he say why?

1 A. He said that he reviewed it and was able to see
2 that they could cut costs here and there. And, then, he
3 specified that the original bid was a valid bid, but they were able
4 to try to save money, and they cut out \$2,000.

5 Q. So, when did you first dispute this second amount,
6 the 5,468? When did you first dispute that with Rocky Mountain
7 Power?

8 A. Right after he called me and told me the \$5,468,
9 that that's what they lowered it to--I told him--I said, Well, how
10 about giving me an itemization, a breakdown, of this, because I
11 wasn't clear how you could all of a sudden knock off \$2,000 and
12 charge me this amount. And so, I said, I want an itemized bill
13 so I can see what I'm paying for, because something doesn't
14 seem honest here. And he would not provide it. He said Rocky
15 Mountain Power does not provide an itemized bill of what they're
16 going to do.

17 So, I began to complain about that. And I spoke to
18 a friend who used to work for Rocky Mountain Power. And he
19 told me that there's a process that I could go through the Public
20 Service Commission that I could file a complaint and try and get
21 this resolved.

22 Q. So, now, I'm going to hand you Exhibit 7, if you
23 could tell us what this is.

24 A. Yeah. This is--excuse me--after my first informal
25 complaint, I received this from Ms. Braithwaite, from Rocky

1 Mountain Power. And they gave me this as an itemized invoice
2 of the labor that they wanted to do on my property with the
3 power pole in question.

4 Q. Okay. And you said you spoke to a friend who
5 used to work for Rocky Mountain Power. Did he tell you
6 anything else--did you show him this?

7 A. I did. And he brought up the tariffs to me when I
8 told him--well, actually, when I got this, I was able to show him
9 what they wanted me to pay for. And he's the one that said,
10 Well, by the rules, you don't need to pay for the transformer,
11 because of the tariffs, at which point he printed off the tariffs
12 and showed them to me. And that's how I found out what the
13 tariffs say.

14 Q. Including Section 2(e).

15 A. Yes, especially Section 2(e).

16 Q. Now, based on this itemization and in the situation
17 after--gone through, what do you feel you're responsible to pay?

18 A. I only need to pay for the meter, the price that it
19 cost to run the power from that meter to the power pole, and
20 then up to the transformer. So, the removal labor, the material
21 salvage--of course, they can keep that, because that's going to
22 be on them. The bird guard, grounding bolts, jumpers, fusing,
23 clamps, risers, and brackets, the transformer, the Ovh service
24 connectors and labor--
25 all those things are at their cost, as per Rule 2(e).

1 Q. So, basically, those latter items are the upgrade--

2 A. Correct.

3 Q. --of the 10--the 10kVA to the 25kVA.

4 A. Yes.

5 Q. And lastly, Exhibit 8. And, then, just for good
6 measure, could you tell us what this exhibit is?

7 A. Yes. I had a problem. We went to a mediation.

8 And, obviously, this wasn't resolved, but I needed to get power
9 ran to my house so that I could move in. The house was done.
10 I just couldn't move into my house, as per the county rules. So,
11 I asked Rocky Mountain Power during mediation if I could pay
12 for what they're asking just so that I could get into my house.
13 And then, of course, when I win this, that they would reimburse
14 me the amount they owe me. And they said that would be fine.

15 Q. So, this is receipt of that payment.

16 A. This is receipt of that payment so that I could get
17 power--permanent power ran to my house.

18 Q. Okay.

19 A. Which, just to also note, that's why in the first
20 picture I showed there's no more power being ran to that
21 temporary pole, because it's now permanent to my house.

22 Q. Okay. Is there anything else that you want to add
23 about the facts of this case that you feel is important?

24 A. Outside of just the tariff itself, I think we've covered
25 everything.

1 MR. BINGHAM: Okay. I think that's all I have for
2 now.

3 THE HEARING OFFICER: Ms. Hogle, do you have
4 any questions?

5 MS. HOGLE: I do. Just a few. Maybe just one.

6 CROSS-EXAMINATION

7 BY-MS.HOGLE:

8 Q. Mr. Stephens, do you by chance have your reply to
9 Rocky Mountain Power's answer and motion to dismiss in front
10 of you?

11 A. I can find it.

12 Q. Okay.

13 A. Is that the order that grants it to be dismissed?

14 Q. No. It's called "Complainant's Reply, Rocky
15 Mountain Power's Answer and Motion to Dismiss."

16 A. No, I did not bring that with me.

17 MR. BINGHAM: And I apologize. I don't have a
18 copy with me either.

19 MS. HOGLE: Okay.

20 THE HEARING OFFICER: Ms. Hogle, we can take
21 a break if you would like to make a copy.

22 MS. HOGLE: You know, I don't think it's necessary.
23 I think I can--if Your Honor will indulge me, if I can be allowed
24 to show him what I need him to read into the record, if you don't
25 mind. Or if you think that you'll want to see it, then I can make

1 a copy of it.

2 THE HEARING OFFICER: I have the same
3 document, so--

4 MS. HOGLE: Oh, do you?

5 THE HEARING OFFICER: It's really an issue if Mr.
6 Bingham has an objection, then we'll address that, but--

7 MS. HOGLE: Okay.

8 THE WITNESS: But he may--do you want a copy?

9 MR. BINGHAM: I think we'll be okay. I mean, if I
10 have any issues, I'll ask for a copy, but I can follow--

11 MS. HOGLE: Okay.

12 MR. BINGHAM: --what she's going to do.

13 MS. HOGLE: May I approach the witness, Your
14 Honor?

15 THE HEARING OFFICER: You may.

16 BY MS. HOGLE:

17 Q. Okay. Mr. Stephens, I am handing you a copy of
18 your reply to Rocky Mountain Power's answer to motion to
19 dismiss. Does that look familiar to you?

20 A. Can I see it, please?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. Now, I am asking you to read into the
24 record--and for Your Honor, it's on page .3 at the very top. And
25 it's the last sentence at the end of that broken paragraph. So,

1 it's No. 4, paragraph No. 4. And it ends at "It should be noted."
2 On page .3, the paragraph ends "It should be noted that." Do
3 you know where that is?

4 THE HEARING OFFICER: Yeah.

5 MS. HOGLE: Okay.

6 BY MS. HOGLE:

7 Q. Okay. So, can you read that into the record,
8 please?

9 A. "It should be noted that the pole and transformer
10 located in the right-of-way are found on the corner of
11 complainant's lot next to the lot line."

12 Q. Okay. Thank you. Do you stand by that?

13 A. It's not quite the corner. It's more in the middle of
14 my lot.

15 Q. Okay. In terms of next to the lot line?

16 A. Then that would be inappropriate, because it's
17 inside my lot. It's in the right-of-way 10 feet, so obviously, there
18 needs to be some clarification here, because that pole sits
19 about 10 to 15 feet off of the road. So, it is on my lot line, but
20 you do have an easement or a right-of-way on my property to
21 run that power pole.

22 Q. Okay. Thank you. Would you acknowledge,
23 however, that normally, poles are not set on, at, or inside lots;
24 they are outside, they are in a public easement right-of-way?

25 A. It is not a public easement. There's an easement

1 for Rocky Mountain Power, so--and for the gas line, but it's not
2 an easement necessarily for just anybody in California that
3 wants to come on my property.

4 Q. Okay.

5 A. So, obviously, it's an easement for Rocky Mountain
6 Power. That's true.

7 Q. But you did state in this complainant's motion to
8 dismiss or answer to motion to dismiss that the pole and
9 transformer were next to the lot line, correct?

10 A. Then, I would have mistyped that or miswritten it,
11 because that's not clear; but what I have said today is.

12 Q. I think we'll establish that what you originally wrote
13 is correct in terms of where it sat or next to the lot line. Thank
14 you.

15 THE HEARING OFFICER: Ms. Hogle, if I could ask
16 you to please limit your cross of Mr. Stephens with questions.

17 MS. HOGLE: Okay.

18 THE HEARING OFFICER: What you just said was
19 more appropriate for perhaps your opening statement.

20 MS. HOGLE: Okay. Thank you.

21 That's all I have, Your Honor.

22 THE HEARING OFFICER: Okay. Thank you.

23 Mr. Bingham, before--give me just a moment. I do
24 have a number of questions for you.

25 EXAMINATION

1 BY-THE HEARING OFFICER:

2 Q. And if we could, just as a beginning point, circle
3 back, in part, to what Ms. Hogle was addressing to you with you.
4 And do you have Exhibit 2 handy?

5 A. We gave them all to the recorder, except for Exhibit
6 8.

7 THE HEARING OFFICER: Okay. Why don't we
8 give Mr. Stephens the exhibits so he can have those available
9 him during questioning.

10 THE WITNESS: I'm ready, Your Honor.

11 BY THE HEARING OFFICER:

12 Q. Okay. And do you have Exhibit 2 in front of you?

13 A. I do.

14 Q. Okay. And if I understood you correctly, your lot is
15 Lot No. 1. Is that correct?

16 A. That is true.

17 Q. Okay. And I believe when you were testifying, you
18 said that this is recorded by the--
19 this subdivision was Mack's Place Subdivision was recorded by
20 the county recorder on May 16, 2013. Can you help me find that
21 date on here? I--I'm looking at a different date. And I just
22 wanted to clarify that--

23 A. Yes. In the bottom right-hand corner, you'll see
24 "Morgan County Recorder." And I've highlighted mine in blue,
25 just if you need to see it, Your Honor.

1 Q. Okay. I do see that. Thank you very much. Very
2 hard to see, but I do see it. Okay. Thank you.

3 And looking at your lot, there's some shading. Do
4 you know what that shading is for?

5 A. Yes. That is where the home can be built anywhere
6 inside that shaded area. So, where it's just white or clear, I
7 would not be permitted to build any structure back there.

8 Q. Okay. And with respect to the utility easement that
9 you referenced during your response to Ms. Hogle--

10 A. Uh-huh (affirmative).

11 Q. --do you recall that that utility easement is noted on
12 this plat map?

13 A. Yes. I can explain it to you. So, if you look at Lot
14 1, you'll see a dark line that goes all the way around my
15 property. Do you see that? And, then, you will see a dotted
16 line. Now, that dotted line that encircles my entire property that
17 I do own is an easement, or a right-of-way, for the power
18 company, gas company, whatever kind of company that needs to
19 access that property line. So, this power pole that is in question
20 sits on that dotted line inside the dark or the solid line of my
21 property. So, it clearly is on my property.

22 Q. It appears to me that the dotted line that you're
23 referring to that notes the utility easement is assuming north is
24 at the top of the map--

25 A. Correct.

1 Q. --goes north and then south and then to the east,
2 but it doesn't go back up the lot. There is an easement there,
3 but it appears--well, it says--
4 I'm sorry. I correct myself. It says, "Irrigation utility." So, the
5 utility easement surrounds the property.

6 A. Correct.

7 Q. Does this map show where the utility pole is
8 situated?

9 A. No, but I could put a dot. But it makes it close to
10 where it actually sits, if that would help you.

11 Q. Is it your understanding that it is somewhere inside
12 of that utility easement?

13 A. It absolutely is, because you can see how the dark
14 line runs right up to the road. And, then, you can see that utility
15 easement that sits down below the road. And, then, that utility
16 easement runs all the way around my property. The entire--it
17 encompasses the entire part of the property. So, that pole sits
18 on that utility easement inside my property.

19 Q. Has there been any reason to have your property
20 surveyed to confirm that it is situated on--

21 A. Well, I believe that's what this plat is, because that
22 is the property.

23 Q. Okay. What I'm asking, sir--and please allow me to
24 finish before you respond--what I'm asking is, have you had a
25 survey that would confirm that that pole is, in fact, in your

1 utility--

2 A. I have not paid--

3 Q. --easement?

4 A. --for a survey.

5 Q. If you would please go to Exhibit 7, just wanted to
6 clarify with you: Which of the fees listed were you asserting
7 should be borne by Rocky Mountain Power?

8 A. Yes. I'll start at the top.

9 Q. Okay.

10 A. You see where it says "Material salvage," that's
11 obviously a credit to me. I shouldn't receive that credit
12 because--

13 THE REPORTER: Did you say "should"? "should
14 not"?

15 THE WITNESS: I should not, simply because by
16 Rule 12, 2(e), they pay for the upgrade. It's their transformer. I
17 should not receive that money.

18 The removal labor, that's what they should do as
19 part of their upgrade. The bird guard, grounding, and bolts, that
20 should all be part of their upgrade. Jumpers, fusing,
21 clamps--same. Riser and brackets, the same. The transformer,
22 also the same, as part of the upgrade. The Ovh surface
23 connectors and labor, I'm believing that's the same.

24 Now, the underground service conductor and
25 elbows and the meters, that is what I have to pay to run that

1 power from my home up to that pole.

2 Q. Okay. So, everything that's listed there on--let me
3 just make this simple: So, your understanding is that your
4 obligation should be the \$1,522 for the underground service
5 conductor and elbows and the \$138 for the meters.

6 A. That is correct.

7 Q. Could you please go to Exhibit 3?

8 A. I have it in front of me.

9 Q. Mr. Stephens, could you help me understand the
10 genesis of this document?

11 A. Boy, this is tough for me, because this is not my
12 document. This is Rocky Mountain Power's. However, you can
13 see that they're showing the transformer, the lot in question, Lot
14 1--now, obviously, Lot 1's not established here, but you see the
15 power pole. And you do see the easement and you do see how
16 far they show that off of the road. In fact, I think I see a
17 "15"--it's "15T," so I don't know what that means.

18 In any case, there's a 10kVA where that arrow is
19 pointing on my property. So, because that can't handle the load
20 of my home as well as the home across the street, they need to
21 upgrade that to a 25kVA transformer. And, then, they're saying
22 for the bid--this is what they're bidding me--is that they'll need
23 to install about 150 feet of wire goes from the top of that pole to
24 my house.

25 Q. You've identified your home address, which also

1 appears on this document, along with your wife's name. Was
2 this provided to you in conjunction with the bid or bids that
3 Rocky Mountain Power provided?

4 A. That is correct.

5 Q. Okay. Did you have any further conversation with
6 Rocky Mountain Power or an individual by the name of Shane
7 Stephens, whose name appears on this document?

8 A. Shane Stephens is the contractor for the home.
9 So, getting this originally started was the contractor's
10 assignment. He did this until I took over and tried to get it in my
11 name and put it in with my wife.

12 Q. Thank you, Mr. Bingham [sic].

13 THE HEARING OFFICER: Mr. Bingham, do you
14 have a copy of the provision that you are challenging Rocky
15 Mountain Power Regulation No. 12?

16 MR. BINGHAM: I do, Your Honor.

17 THE HEARING OFFICER: Could you provide that
18 to your client, sir?

19 THE WITNESS: I have a copy in front of me.

20 BY THE HEARING OFFICER:

21 Q. Oh, you do?

22 A. I do.

23 Q. Very good. All right. I'd like to direct you to Rocky
24 Mountain Power Electric Service Regulation No. 12, Section 2,
25 which is identified as Residential Extensions, subsection (e),

1 which is entitled "Transformation Facilities."

2 A. I am there, Your Honor.

3 Q. Would you kindly read into the record the entire
4 section of subsection (e)?

5 A. I will.

6 "Transformation Facilities. When an existing
7 residential customer adds load, or a new residential customer
8 builds in a subdivision where secondary service is available at
9 the lot line, either by means of a transformer or a secondary
10 junction box, and the existing transformation facilities or service
11 conductors are unable to serve the increased residential load:
12 [Number] (1) the facilities upgrade shall be treated as a
13 standard line extension if customer's demand exceeds the
14 capacity of the existing facilities; [Number] (2) the facilities
15 upgrade shall be treated as a system improvement and not be
16 charged to the customer if the customer's demand does not
17 exceed the capacity of the existing facilities."

18 Q. And, Mr. Bingham [sic], which provision do you
19 believe you fall under?

20 MR. BINGHAM: Your Honor, I want to make sure I
21 get this right. So, under the first paragraph, just for clarity's
22 sake, he obviously is a new residential customer. We--

23 THE HEARING OFFICER: Well, we're going to get
24 to that. I'm asking him right now--

25 MR. BINGHAM: Whether (1) or (2)?

1 THE HEARING OFFICER: --whether (1) or (2) is
2 what he believes he falls under.

3 (Cell phone interruption.)

4 MR. BINGHAM: So, this should be No. 1.

5 THE HEARING OFFICER: This is the question for
6 Mr. Bingham--

7 MR. BINGHAM: Oh.

8 THE HEARING OFFICER: --the witness.

9 MR. BINGHAM: I'm Mr. Bingham.

10 THE HEARING OFFICER: I'm sorry.

11 MR. BINGHAM: Sorry.

12 THE HEARING OFFICER: I'm terribly sorry.

13 MR. BINGHAM: It's okay.

14 THE HEARING OFFICER: I sometimes get names
15 mixed up.

16 MR. BINGHAM: That's okay.

17 BY THE HEARING OFFICER:

18 Q. Mr. Stephens, I do apologize.

19 A. It's actually No. 2: "The facilities upgrade shall be
20 treated as a system improvement and not be charged the
21 customer if the customer's demand does not exceed the
22 capacity of the existing facilities." And I can explain to you, if I
23 may.

24 Q. Well, I'm actually going to go through some
25 questions, so you'll get an opportunity to explain.

1 A. Okay.

2 Q. Thank you. Are you, sir, a new residential
3 customer?

4 A. I am.

5 Q. And did you build in a subdivision?

6 A. I did. Lot 1 of Mack's Place Subdivision.

7 Q. Is secondary service available at the lot line where
8 you built?

9 A. The transformer, which is the secondary service, is
10 sitting on my lot, yes.

11 Q. And are existing facilities unable to serve the
12 increased residential load?

13 A. Yes. I would draw more than the remaining 20
14 percent.

15 Q. Does your demand exceed the capacity of the
16 existing facilities?

17 A. I have been informed no.

18 Q. Can you help me understand what you mean by
19 you've been informed no?

20 A. Yes. I've spoken with my electrician. I've also
21 spoken with Karl Sewell from Rocky Mountain Power during
22 mediation. He said a home would have to be bigger than mine
23 to draw more than a 100 percent of that 10kVA.

24 Also, the home across the street, Brad Peterson's
25 home, with his barn is probably a little bigger than--just looking,

1 bigger than my house. Therefore, he's drawing 80 percent.
2 That's probably about what I would be drawing is 80 percent as
3 well.

4 Q. So it's your position, sir, that your demand does not
5 exceed the capacity of--

6 THE REPORTER: I'm sorry. I didn't hear the end
7 of your question. There was some noise. "Does not exceed the
8 capacity of" . . .

9 THE HEARING OFFICER: "The existing facilities."

10 THE WITNESS: No. By itself, it would not exceed
11 the demand.

12 BY THE HEARING OFFICER:

13 Q. Does that adequately cover the explanation you
14 wish to provide, sir?

15 A. Yes, ma'am--or Your Honor. Excuse me.

16 Q. Either is acceptable.

17 Any redirect, sir?

18 MR. BINGHAM: Just really quick.

19 REDIRECT EXAMINATION

20 BY-MR.BINGHAM:

21 Q. Rod, I want to focus a little bit more on this Section
22 2(e) to make sure that you have a chance to talk about that.
23 The first paragraph leads into (1) and (2). So, what's your
24 understanding of that last line, when it says that the existing
25 transformation facilities or service conductors are unable to

1 serve an increased residential load?

2 A. Unfortunately, I didn't see where you're reading,
3 Mr. Bingham.

4 Q. So, the very last clause, it starts with the existing,
5 of that paragraph, the last line--
6 actually, it's second-to-last line. The existing--

7 A. Oh, I'm with you. "The existing transformation
8 facilities."

9 Q. Yeah.

10 A. Okay. Would you please . . .

11 Q. So, what's your understanding of what that means,
12 when it says, ". . . the existing transformation facilities or
13 service conductors are unable to serve the increased residential
14 load"?

15 A. Which means the transformer on my property that
16 was--has been there since 1970--it has existed--that it cannot
17 pull the load of both my home and the home across the street.

18 Q. So, in this paragraph, it's talking both of them
19 together.

20 A. Correct. It--yeah, because it's the existing
21 transformation facilities or the service conductors are unable to
22 serve the increased residential load. So, there's going to be a
23 load from my home in conjunction with Mr. Peterson's home,
24 that that 10kVA cannot handle both homes.

25 Q. So, then, if that holds true, which you testified it

1 does--then you look, does one or two apply? And you testified
2 No. 2 applies.

3 A. That is correct.

4 MR. BINGHAM: I have no other questions, Your
5 Honor.

6 THE HEARING OFFICER: Thank you, Mr.
7 Stephens. You may be excused.

8 THE WITNESS: Your Honor, what shall I do with
9 these exhibits?

10 THE HEARING OFFICER: The exhibits should go
11 to the court reporter. And at some point, we should address
12 them being admitted into the record. So, if you want to wait
13 until the end of the hearing or you want to do that now, Mr.
14 Bingham, it's . . .

15 MR. BINGHAM: We could do that now.

16 THE HEARING OFFICER: Okay.

17 MR. BINGHAM: Yeah. I would move that these
18 exhibits, as we presented them, be admitted to the record, with
19 no objection from--

20 THE HEARING OFFICER: Is there any objection?

21 MS. HOGLE: No objection.

22 THE HEARING OFFICER: They are admitted.
23 Ms. Hogle.

24 MS. HOGLE: The company calls Mr. Stewart.

25 THE HEARING OFFICER: Mr. Stewart, good

1 morning and please take the stand. I'll swear you in.

2 Do you swear that the testimony you will give today
3 will be the truth?

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: Thank you very much.
6 Please have a seat. If you kindly situate that microphone so it
7 will be near you so it will pick up your voice well.

8 THE WITNESS: Okay.

9 THE HEARING OFFICER: Maybe a little closer.

10 THE WITNESS: That better?

11 THE HEARING OFFICER: That's better. You have
12 to really talk into that one. It doesn't pick up terribly well.

13 F. ROBERT STEWART, being first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY-MS.HOGLE:

17 Q. Good morning, Mr. Stewart. Can you please state
18 your name and your position for the record?

19 A. My name is F. Robert Stewart. I'm--and I'm a
20 senior regulatory specialist for Rocky Mountain Power.

21 Q. And can you explain what your job entails, please?

22 A. As a senior regulatory specialist, I deal with our
23 regulations that we file in our States that we serve in. So, I
24 review them, I update them, I file them, and I also assist our
25 field people in applying the tariffs.

1 Q. Okay. And, so, as a senior regulatory specialist, do
2 you have any involvement with Rule 12, line extensions?

3 A. Yes. I've been in my position for some time. And I
4 filed this rule with the Commission and the changes in the rule
5 in the last 15 years.

6 Q. And are you familiar with Section 2(e), residential
7 extensions, transformation facilities language?

8 A. Yes. I'm very familiar with it. I--I'm the one who
9 originally filed it with the Commission in 2008.

10 Q. Mr. Stewart, you were in the room, were you not,
11 when Mr. Stephens indicated that the transformer that is the
12 subject of today's hearing was in existence, I believe, to use his
13 own words, before he was born?

14 A. Yes. I heard that testimony.

15 MS. HOGLE: Your Honor, may I approach the
16 witness?

17 THE HEARING OFFICER: You may.

18 MS. HOGLE: Thank you.

19 BY MS. HOGLE:

20 Q. I just want to ask you a few questions about this.
21 Can you look at the subdivision in Mack's Place--or Mack's
22 Place Subdivision on the map, and ask you a few questions
23 related to Lot 1?

24 A. Okay.

25 Q. As has been established already, the transformer

1 that is the subject of this hearing was in place prior to the
2 division of the--of this property, of this parcel into three lots,
3 correct?

4 A. Yes. That is correct.

5 Q. Okay. And do you see in Lot 1 where the utility
6 easement broken line is?

7 A. Yes. It says it's a ten-foot utility easement--
8 typical.

9 Q. Was that in existence when the transformer pole
10 was installed?

11 A. No, it was not.

12 Q. So, can you, for the record, indicate where the
13 existing transformer pole is as it relates to the property line and,
14 in particular, as it relates to the utility easement?

15 A. Yes. It would be towards the centerline of the road
16 from the property line. It's in--as you look at this map, under
17 Morgan Valley Drive, it states, "66-foot dedicated roadway." It
18 also indicates it stands 33 feet either side of the centerline of
19 the road. It also shows a--the driveway there not as built but as
20 may have to be built. And that drive extends out into that road
21 right-of-way.

22 And in the notes on--where it says, "Driveways," it
23 says, "Driveways shall be paved from the existing asphalt to the
24 property line." So, that shows--is a general indicator of where
25 the asphalt ends and where property line begins. And that

1 is--would be your shoulder or part of your road right-of-way.
2 And that's where the line is--
3 was installed is in that road right-of-way, off the asphalt but in
4 the road right-of-way.

5 Q. And, so, is it your testimony that the existing pole
6 is not at the lot line, but just outside of it?

7 A. Correct. The existing pole is in the road
8 right-of-way, which is not on--in that ten-foot utility easement.
9 It's to the west of it.

10 Q. And how was it that the power company was able to
11 install that pole?

12 A. When we install power lines, we have to have a
13 right to be where we are. And we have--
14 typically, when we go--build a power line, we build in the road
15 right-of-way. We have a franchise easement we establish with
16 the county and the communities which allow us to install our
17 facilities in the road right-of-way and not on the private
18 property. So, we don't have to go and acquire right-of-way from
19 the private landowners.

20 Q. And, so, in this case, the company did not have to
21 build within the utility easement but outside it because of a
22 franchise agreement with the county. Is that correct?

23 A. Correct. There was no utility easement when we
24 installed that pole. We installed it in the road right-of-way. And
25 we did not install it on the private property.

1 MS. HOGLE: Thank you.

2 Your Honor, may I approach the witness?

3 THE HEARING OFFICER: You may.

4 BY MS. HOGLE:

5 Q. Does this look familiar to you?

6 A. Yes.

7 Q. And is this the road that is adjacent to Mr.

8 Stephens' property?

9 A. Yes.

10 Q. Can you indicate for us where the lot is where Mr.

11 Stephens' property is on this picture?

12 A. Yes. It would be on the right-hand side behind that
13 barbed wire, or any wire fence, that's indicated by the right hand
14 of that arrow that points across--that indicates the road
15 right-of-way. At the far right-hand side, you see a fence line.
16 And that's the property line that Mr. Stephens' property is on the
17 right-hand side of that fence line.

18 Q. And the 66-foot road right-of-way shown on that red
19 line there, that is representing the same road--dedicated
20 roadway as you see in Mack's Place Subdivision that I handed
21 you earlier. Is that correct?

22 A. Yes. That's the road right-of-way of which we have
23 been speaking, the 66-foot wide. And the pole sits in that
24 right-of-way.

25 Q. And, so, in this picture, where is the pole that is the

1 subject of this hearing located as it relates to the fenced
2 property there?

3 A. It sits seven feet--this picture doesn't indicate it as
4 clearly--but it sits seven feet to the roadside of the property
5 line.

6 Q. And it is not directly on top of that fence. Is that
7 correct?

8 A. Correct. It's seven feet from that fence.

9 Q. Okay.

10 MS. HOGLE: Your Honor, may I approach the
11 witness?

12 THE HEARING OFFICER: You may.

13 BY MS. HOGLE:

14 Q. Can you describe what I've just given to you?

15 A. Yes. This is an aerial view of the same area of the
16 previous picture. And it indicates the road right-of-way. And
17 where that tractor with the swather, mower, or whatever it is
18 behind it, that sits on Lot 1 of Mack's--what currently is Mack's
19 Place Subdivision Lot 1.

20 Q. Is that Mr. Stephens' lot--

21 A. Yes.

22 Q. --to your knowledge?

23 A. Yes.

24 Q. And do you see on the--to the right of the outside
25 of the imaginary line that we see, what is that?

1 A. To the right of the road? You see just above the
2 right-hand arrow, you'll see a dark shadow. That's a shadow
3 from the power pole. So, at the base of that shadow, if you're
4 moving down, that would be the--where the base of the pole is,
5 you get some sun reflecting. I believe that would be off a
6 transformer, the actual transformer. So, the angle of this photo,
7 you can see the base of that power pole being in the road
8 right-of-way. And, also, you can see a line--the service line that
9 crosses the road. It shows that up just above the red--red
10 arrows indicate the road right-of-way.

11 MS. HOGLE: Okay. Your Honor, may I approach
12 the witness again?

13 THE HEARING OFFICER: You may.

14 MS. HOGLE: Thank you.

15 BY MS. HOGLE:

16 Q. Okay. Can you tell us what this picture represents?

17 A. Yes. The pole in the foreground is a power
18 company pole, the one with the transformer, the one we've been
19 discussing. You see the plate there identifying it as PacifiCorp
20 pole. Off the right, you can see just the end of Mr. Stephens's
21 house. And off the left sitting behind this pole, you see the
22 temporary service pole with that meter base, which Mr.
23 Stephens addressed.

24 Q. And let's talk about--a little bit about the temporary
25 pole. To your knowledge, where does that sit, approximately?

1 A. It would--approximately sits on the property line.
2 The contractor--would not have the right to build in the road
3 right-of-way. He wouldn't have had that easement as we do.
4 And, so, he would have set that back on to the property line of
5 Mr. Stephens' property.

6 Q. Okay. Thank you. I want to keep asking you a few
7 questions, if you don't mind. Can you tell us, as the senior
8 regulatory specialist, what Section 2(e) of the tariff addresses
9 and why it was filed?

10 A. Yes. What it addresses is a situation where we
11 have a customer request service from existing facilities, and
12 those facilities--either requests new service or additional
13 service, and those facilities are not large enough to serve them.
14 And, so, it addresses--that those--that new customer, whether or
15 not they have to pay for it or the existing customer has to pay
16 for the cost of upgrading those facilities.

17 The reason why it was filed is we had the situation
18 in the company that in--where homes were--people were
19 converting from swamp coolers to air conditioning units. And
20 our tariff, at that time, did not have this clause in there. And
21 what it simply said is, the customers pay the cost less their
22 allowance. And what we were finding is there were times when
23 multiple customers were sharing a transformer. And several of
24 them would add load. And, then, there would be one who would
25 break the--you know, be the straw that broke the camel's back.

1 And they were having to pay for it. And that was not being--
2 mean, it was almost arbitrary who would have to pay and who
3 didn't.

4 And it was desirable to reach a consistency of who
5 would have to pay and who wouldn't when a customer's already
6 served from a transformer; or in the situation of a subdivision
7 where the developer provided service to the lot line already
8 where we had designed the size of facilities, that we wanted to
9 have it determined whether or not the customer building on that
10 lot would have to pay for upgrading the transformers being
11 shared with other lots.

12 And, so, we filed this that had that language that
13 addressed existing residential customers and new customers
14 who build in a subdivision where secondary service is available
15 at the lot line as given in the section on developers.

16 Q. Okay. Let me ask you a question about the existing
17 pole and what its function is. The subject pole that we're talking
18 about, who does that serve?

19 A. It currently serves two individuals. It serves across
20 the road to a home on the other side, which would be as
21 testified by--

22 Q. Mr. Stephens?

23 A. --Mr. Stephens to Mr. Peterson. And that served it
24 for some time. And, now, it also serves Mr. Stephens.

25 Q. Okay. After he paid the--executed the contract.

1 A. Yeah. After the transformer's upgraded from the 10
2 to the 25, as he testified.

3 Q. All right. So, why does the company limit
4 application for new customers to just those in a subdivision with
5 secondary service to the lot line?

6 A. It's for this reason: I'd like to refer to Regulation
7 12, Section 4, Paragraph (b), which talks about extensions to
8 planned developments.

9 Q. Okay.

10 A. And in it, we state, "For residential developments
11 will provide"--"the company will provide the developer a
12 maximum extension allowance of \$750 for each lot." Then, "The
13 developer must pay a nonrefundable advance for all other costs
14 to make secondary voltage . . . available to each lot."

15 And, so, what happens is, when a developer
16 requests power to the subdivision, we design it. We decide how
17 big the transformers are. And, so, the understanding is that
18 we're going to design that transformer to be big enough to serve
19 all the lots that it's serving and that the customers won't have to
20 pay to upgrade it, unless, the exception will say, if they exceed
21 the capacity of that by themselves.

22 And, so, in this situation, where we have a
23 developer having paid to receive power to each lot--they paid all
24 the costs less 750--we've accepted the obligation to make sure
25 that power's adequate to those lots. And, so, that's why we

1 exempt those lots that--we allow those new homes. We don't
2 any other new home, but those homes, because we've already
3 invested and planned and the developer's already invested in
4 making power available to--it's been designed and provided
5 power to serve that lot.

6 So, really, this Section 2(e) is for existing
7 customers and--that are--are being served and also existing lots
8 that are being served.

9 Q. Does Mr. Stephens' lot, or any of the Lot 2 or 3
10 from this parcel that was recently subdivided--do they fit the bill
11 or the definition under Section 2(e) of Regulation 12?

12 A. No. They do not, because there was never--the
13 provisions of 4(b) were never--never occurred. The developer
14 never approached us to receive power to each lot. He never
15 paid us anything. We never did a design, because he never
16 approached us. He never paid us anything, again, to make that
17 power available to each lot, as required by the tariff. And,
18 consequently, it wasn't installed. And that--it never occurred
19 that secondary service was available at the--any of the lot lines.

20 Q. And, so, in Mr. Stephens' reply to the company's
21 motion to dismiss, he states that there is secondary service
22 available at the lot line on two of the three lots in his
23 subdivision. Is this true?

24 A. No, it is not. This secondary--there's transformers
25 poles in the road right-of-way but not the--at lot lines of any of

1 the lots.

2 Q. Up until very recently, when the company required
3 Mr. Stephens execute the contract and provide--

4 A. Right. We ran service to him, but still, there
5 wasn't--still isn't any transformer secondary box at the lot line.

6 MS. HOGLE: Okay. Your Honor, may I approach
7 the witness again?

8 THE HEARING OFFICER: You may.

9 MS. HOGLE: Thank you.

10 BY MS. HOGLE:

11 Q. Mr. Stewart, can you tell me and explain to us what
12 I've handed to you as "Mack's Place Subdivision, actual"?

13 A. Yes. This is a little drawing I put together to
14 illustrate the situation of three lots, Mack's Place Subdivision,
15 and how power is made available to those lots. So, it indicates
16 that currently we have a transformer that serves Lot 1 by means
17 of a service run that runs to that transformer through the
18 customer's property, and then out into the road right-of-way and
19 up to that transformer.

20 MS. HOGLE: Okay. Your Honor, may I approach
21 the witness?

22 THE HEARING OFFICER: Yes, you may.

23 BY MS. HOGLE:

24 Q. And, now, can you explain the second depiction
25 here that I've just handed to you in terms of what this

1 represents?

2 A. This represents a possible scenario. We never did
3 a design, but had we been requested to serve these three lots
4 by a developer, we would have installed a transformer that could
5 serve these three lots. We would have then run secondary to
6 secondary boxes so that there would be power--
7 secondary power available to each lot line from which each of
8 those customers, when they built on their lot, could have
9 connected to and served their homes. There would have been
10 secondary at the lot line and then the customer would have
11 fallen under the provisions of a new customer on a lot in a
12 subdivision.

13 Q. Do you recall the Exhibit No. 4 that counsel for Mr.
14 Stephens admitted into evidence earlier? And it was a letter
15 addressed to Mr. Brad--from Rocky Mountain Power. Do you
16 recall that?

17 A. I--if you'd show it to me just briefly, I'm sure I will.

18 Q. Okay.

19 A. I just want to know which one.

20 Yes.

21 Q. Okay. I'm going to ask you a few questions about
22 that. If you need the letter, let me know. But Mr. Peterson at
23 the time in February 2013, correct--is it your understanding that
24 Mr. Peterson was the developer for Mack's Place Subdivision?

25 A. Yes. As the addressee of that letter, yes.

1 Q. And to your knowledge, did Mr. Peterson ever pay
2 the costs that are nonrefundable--and I'm looking at Point 4,
3 Your Honor--above the \$750-per-lot allowance, according to
4 Line Extension Tariff Regulation 12 for this subdivision?

5 A. No. There was no expense incurred. There was no
6 money paid to us. There was no power extended. No, it didn't
7 happen.

8 Q. And, so, were you in the room when--
9 and I believe you were, weren't you--when Mr. Stephens
10 testified that when he asked Mr. Peterson about power, Mr.
11 Peterson say--said, "There you are. That's your pole"?

12 A. Yes.

13 Q. And do you have anything to say about that?

14 A. Well, it's true there's power right there. It doesn't
15 address what it cost to receive power from there, but there is a
16 power pole there. And it was--so, it--we did know--you know,
17 it's a true statement. There is power right there. But it's
18 not--and the statement as to what provisions of the tariff apply
19 to getting power from that point.

20 Q. Okay. I'll continue on.

21 So, we've been talking about secondary voltage
22 service and its availability to each lot. What--how are lots able
23 to receive secondary voltage service?

24 A. What we do--our design method is we set a
25 transformer--now, secondary refers to the low voltage side of a

1 transformer which is the voltage that you use in your home. And
2 what we do is, we set one transformer, then we extend from that
3 transformer out to what we call secondary pedestals, or
4 secondary boxes, which is a box that we run our conductor,
5 electrical conductor into. So, it's energized or has--so, it's a
6 plug-in, basically. So, when someone wants to build a home on
7 the lot--and we set those on the lot lines in the subdivision by
8 design--and we--and there's where the home builder will trench
9 to and provide the service so that we can run the service from
10 that point on their lot over to their meter base.

11 Q. And, so, these secondary pedestals, or boxes, that
12 you're talking about, are those on the lot line--

13 A. Yes.

14 Q. --basically?

15 A. When we have a request from a developer, we get
16 a plot map from them. And, then, we design our system. And
17 we give that to the developer to--and we tell them how much it'll
18 cost. And, then, the developer, he trenches and he puts a hole
19 right there on the lot line for us to put our pedestal. And he'll
20 stake it so that we know where the lot line is, so that we put
21 these pedestals on the lot line on the lots in that--they also
22 provide us a utility easement. And that's where those facilities
23 go and--the utility easement on the lot lines that we can serve
24 those homes.

25 Q. To your knowledge, were these boxes available, the

1 trenching--all of the details that you discussed, were they in
2 existence when Mr. Stephens requested service for his lot?

3 A. No. They were not at that time and they are not at
4 this time.

5 MS. HOGLE: Okay. May I approach the witness,
6 Your Honor?

7 THE HEARING OFFICER: You may.

8 BY MS. HOGLE:

9 Q. Mr. Stewart, can you confirm for me what this
10 represents?

11 A. This represents a drawing of both the pedestal and
12 the box. Either one could be used. But only for the pedestal
13 did we illustrate what's inside it. The stuff for the box would be
14 the same. It shows that there's three sets of conductor that
15 come in, the side view A, which indicates your neutral and your
16 two phases that you need in a--for the two--for your 120 and
17 your 240 to get the power for a home.

18 And, then, the other view, view B, shows that
19 there's actually four places, connection for each one of those,
20 so that you can run a power from the transformer and then you
21 can run power out of it to the services of the home or over to
22 another secondary junction box. So, this is just the secondary
23 boxes, the way we make secondary available to the lot line and
24 how that works that we can use it to distribute that secondary
25 power.

1 Q. And, so, how much would this--the installation of all
2 these facilities cost the developer, had the developer in this
3 case developed the property so that each lot received the
4 appropriate service?

5 A. We didn't do design. I don't really know how much
6 it would cost them. I know it would cost them the total cost less
7 750 per lot, as provided in the tariff, in the provisions for
8 planned developments.

9 Q. I mean, is that consistent with the letter that was
10 provided to Mr. Peterson when this issue came--

11 A. Yes. In that letter, it mentions that, that--his
12 responsibility and his cost less the \$750 allowance.

13 Q. I want to talk a little bit about Section 4 of the
14 regulation and the use of the terms "planned development,"
15 "residential development." What--what's the difference between
16 a planned residential development and a subdivision?

17 A. There is no difference. As you read Regulation 4 in
18 general, first introduction statement, it says, "Planned
19 developments, including subdivisions" So, we--we're
20 saying a subdivision is one type of planned development.

21 Q. Okay.

22 A. And what I read was 4(a), "General."

23 Q. Okay. And, so, does Mack's Place Subdivision fall
24 under the provisions of planned residential development or
25 subdivision as given or as described in Rule 12?

1 A. No, because it states--in the second paragraph of
2 4(b), it states that, "The developer must pay a nonrefundable
3 advance for all other costs to make secondary voltage service
4 available to each lot." That's after saying they get the 750
5 allowance. So, they only fit that definition if they paid to have
6 that secondary voltage available to each lot.

7 Q. So, Mr. Stephens earlier and counsel for Mr.
8 Stephens were--in particular, Mr. Stephens testified that he was
9 given two different prices and different costs. Do you know what
10 the difference, approximately, were--was on the costs that were
11 quoted to him pursuant to those contracts?

12 A. Not in detail, other than there was some redesign
13 done allowed them to lower the cost.

14 Q. So, in Mr. Stephens' case, the company did or did
15 not provide the \$750-per-lot allowance for the Mack's Place
16 Subdivision?

17 A. No. There was never a \$750 allowance given.
18 There was no secondary service installed.

19 Q. So, Mr. Stephens' request for power, what did the
20 company credit him?

21 A. Eleven hundred dollars. That goes back to the
22 beginning of Section 2 that says, "The extension allowance for
23 permanent single residential applications is \$1100." And, then,
24 it goes on to say if they're in a planned development where
25 there is secondary voltage service available at the lot line, it's

1 \$350.

2 Q. Okay.

3 A. Could--I'd like to point out that that 350 is what's
4 left over of the 1100 after the 750 is given to the developer, that
5 the allowance is \$1100 residential lots. But in the case of the
6 developer, they've invested all the expense necessary, save the
7 cost of the service. And, so, the company filing this withheld
8 350 from the developer so that the person building the
9 subdivision would have enough for their service.

10 Q. But in this case, that did not happen, again,
11 correct?

12 A. Correct, it was never--it was not--never
13 was--secondary was never established to the lot line.

14 Q. And, thus, the reason why the company provided
15 Mr. Stephens the full \$1100 allowance. Is that correct?

16 A. That is correct.

17 Q. So, just to be clear, the transformer pole that is the
18 subject of the hearing, your testimony is--and the evidence and
19 the pictures indicate--that there is no overlap between the
20 transformer pole and Mr. Stephens' property. Is that correct?

21 A. That is correct.

22 Q. One more question: Is Mr. Stephens--is the way
23 that the company has acted in this situation the same as
24 situations in the past where a developer did not develop or did
25 not provide secondary voltage service or provide the necessary

1 investment to provide secondary voltage service in those
2 situations?

3 A. Yes. It's not uncommon for someone to subdivide
4 lots without paying to have secondary installed. And when we
5 receive requests from those customers, we treat them as a new
6 customer and give them the eleven hundred--they pay all costs,
7 less their \$1100 allowances. I can give lots of examples of that.

8 Q. So, is it your testimony that Mr. Stephens is being
9 treated the same as any other customer, residential customer
10 would in his case?

11 A. Yes.

12 MS. HOGLE: Okay. I have no other questions,
13 Your Honor.

14 THE HEARING OFFICER: Mr. Bingham.

15 CROSS-EXAMINATION

16 BY-MR.BINGHAM:

17 Q. So, Mr. Stewart, a couple of things that I would like
18 to follow up on with you. I want to go back to--I'm not sure
19 what's been marked, but the company's--

20 THE HEARING OFFICER: Actually, if I may
21 interject. Ms. Hogle, we typically--

22 MS. HOGLE: Yes.

23 THE HEARING OFFICER: --request the exhibits to
24 be marked.

25 MS. HOGLE: Yes.

1 THE HEARING OFFICER: Let's go through that
2 real quickly--

3 MS. HOGLE: Okay. Let's do that.

4 THE HEARING OFFICER: --so it makes it easier.

5 MS. HOGLE: Okay. I believe the first Rocky
6 Mountain Power cross exhibit would be the large Mack's Place
7 Subdivision.

8 THE HEARING OFFICER: And do we want to give
9 it a letter or a number?

10 MS. HOGLE: And that would be Cross Exhibit RMP
11 1.

12 And I believe the second cross exhibit RMP--and
13 that I--we discussed was the view from the road that showed the
14 66-foot road right-of-way, I believe that shows the transformer
15 there. That would be Cross Exhibit RMP 2.

16 The third one would be the aerial view of the same
17 one. It shows, again, the 66-foot road right-of-way in red with
18 the arrows pointing. That would be Cross Exhibit RMP 3.

19 And I believe the next one would be the--okay.
20 Those two. The--let me see. The view of the two poles, one of
21 the transformer, and the other one the temporary pole--so, that
22 would be RMP Cross Exhibit RMP 4.

23 And, then, the next one would be the drawing, the
24 depiction of Mack's Place Subdivision, actual. And that would
25 be Cross Exhibit RMP 5.

1 And the next one would be Cross Exhibit RMP 6,
2 which would be the possible design had the developer requested
3 the service, the depiction. That would be Cross Exhibit 6. And
4 I believe that's it. I think the next one we referred to the letter.

5 THE WITNESS: No. The (indicating) . . .

6 MS. HOGLE: Oh, yes. Excuse me, Your Honor.
7 RMP--Cross Exhibit RMP 7 would be the picture of the pedestal.
8 And I believe that does it.

9 Is that correct, Mr. . . .

10 Okay.

11 THE HEARING OFFICER: Mr. Bingham, you may
12 proceed.

13 MR. BINGHAM: Thank you, Your Honor.

14 BY MR. BINGHAM:

15 Q. I think what I want to do is work my way backwards
16 through the exhibits. We ended on this last one. And we'll kind
17 of go back through. Have questions about pretty much
18 everything.

19 So, looking at Rocky Mountain Power Exhibit 7, the
20 diagram of secondary junction boxes, you testified that in the
21 past there have been many customers that have built in
22 subdivisions where the developer hasn't installed this type of a
23 system. Is that correct?

24 A. Yes.

25 Q. Is this system required, this type of a secondary

1 junction box required?

2 A. It is if they want to fall in the provisions of having
3 secondary to the lot line.

4 Q. Okay. Can you point me to the section of the
5 Regulation 12 that says that that's required in order for
6 someone to qualify for 2(e)?

7 A. It's the wording that's used on purpose in three
8 places. In each place that uses that, it talks about where
9 secondary voltage--Rule 2(a) talks about where they build in a
10 planned development where secondary voltage is available at
11 the lot line. We use the same wording.

12 In the 2(e), it says, ". . . secondary service is
13 available at the lot line"

14 Q. Can you continue that sentence and read the rest
15 of that line?

16 A. ". . . either by means of a transformer or a
17 secondary junction box"--

18 THE REPORTER: A little slower, please.

19 THE WITNESS: Oh, I'm sorry.

20 ". . . either by means of a transformer or secondary
21 junction box"--

22 BY MR. BINGHAM:

23 Q. Okay. So, let me stop you right there.

24 A. Yes.

25 Q. That's the part I want to focus on. ". . . either by

1 means of a transformer or a secondary junction box" Both
2 of those are used to define secondary service. Isn't that
3 correct?

4 A. Correct.

5 Q. So, it doesn't have to be this type of box to qualify
6 for 2(e).

7 A. Correct.

8 Q. Okay. Thank you. Let's take a look at Rocky
9 Mountain Power No. 6. So, this possible design--I guess the
10 first question: This isn't what ultimately happened when they
11 required Mr. Stephens to have the \$1100 allowance and to
12 follow the rules.

13 A. Right. This is a design for a subdivision. Mr.
14 Stephens didn't request service to the subdivision.

15 Q. Is this what Rocky Mountain Power's done in other
16 places along Rocky Mountain--I'm sorry--along Morgan Valley
17 Drive when there's been a large--large lot subdivisions like this?

18 A. If the developer comes to the company and
19 requests service to the sub--to the lots in the subdivision, yes,
20 that's--we supply secondary to the lot line by either means, of a
21 transformer or a secondary junction box. The purpose for the
22 secondary junction boxes allows you to serve more than just two
23 lots from that transformer.

24 Q. So, in this situation, do you know how far they
25 would have had to have moved the power pole to put it where

1 you've drawn it on here for Lot 1?

2 A. That's what I say: It's a possible design. I didn't
3 go out and indicate where that transformer would be. The
4 transformer's located--where the location of that is--not the
5 point I was illustrating when I did this possible design.

6 Q. And I guess the point that I want to draw out and
7 have you address would be--

8 MS. HOGLE: Objection, Your Honor. I--
9 counsel is about to testify.

10 MR. BINGHAM: I'm asking him to explain--I'll
11 rephrase. I apologize.

12 BY MR. BINGHAM:

13 Q. So, is it Rocky Mountain Power's policy to move an
14 existing pole with a transformer on it a greater distance than it
15 would take to run the power from that pole to the home?

16 A. Rocky Mountain Power does not have a policy of
17 moving poles. As far as--I'm not sure quite--maybe you need to
18 restate that. I'm not sure.

19 Q. Or run the power from that existing pole a greater
20 distance to that new pole that you've drawn as opposed to just
21 running it to the residence?

22 A. I didn't draw a pole. I drew a transformer. And
23 that would be a pad-mount transformer in this case, in this
24 illustration. That wouldn't have been on a pole.

25 Q. Okay. But to your knowledge, has this type of a

1 possible design been used anyplace along Morgan Valley Drive?

2 A. I am not familiar with the current construction, but I
3 do know that where we have subdivisions throughout all our
4 service territory that we set secondary junction boxes. And if
5 there's enough--and we also set transformers to serve those
6 secondary junction boxes.

7 Q. Would you agree that Rocky Mountain Power would
8 treat a situation with large lots where there are multiple acres
9 different than small, say, quarter-acre lots that are in a
10 subdivision?

11 A. Treat them differently in what sense?

12 Q. In whether they would do this possible design.

13 A. I'm sorry. I--we will provide power to each lot and
14 what's ever required to do that, we will do that.

15 Q. Okay. Fair enough. Let's skip No. 5 and come
16 back in a second, because it comes into play with other exhibits.

17 I guess really Exhibits 1, 2, 3, 4, 5 all have to do
18 with this same issue, so I'll address it. If you could look at No.
19 1, on this plot map, at the--if you follow Morgan Valley Drive up
20 to where the corner of Lot 1 is at, can you see where it says
21 "POB"?

22 A. Yes.

23 Q. What does "POB" stand for?

24 A. Typically, in surveys that's point of beginning.

25 Q. What does "point of beginning" mean?

1 A. When they do a description on the survey, that's
2 where they start--they're describing the property that's going to
3 be included in the--that the survey's being made for.

4 Q. So, when Mr. Stephens, for instance, bought Lot
5 No. 1 and he received a property description, a legal description
6 of the property he was buying, that's the point of beginning of
7 where the description starts, correct?

8 A. If that description used this same survey.

9 Q. Okay. But for purposes of this, which has been
10 admitted as your Exhibit 1, Rocky Mountain Power, that's the
11 point of beginning for the legal description for this subdivision.

12 A. Yes.

13 Q. So, when it shows the dotted line inside that line,
14 that means the utility easement is on the property, not on the
15 roadway.

16 A. Right. For this subdivision, that was the--that the
17 developer had to provide a utility easement. And on this, it
18 shows that's the utility easement that he provided, as required
19 by, I assume, the county in this case.

20 Q. And the power pole is on the right side of the solid
21 black line, correct?

22 A. No, it is not.

23 Q. Have you gone--or has Rocky Mountain Power had
24 a survey done to verify that fact?

25 A. No, they have not.

1 Q. Have you personally gone out and done any
2 surveying or measuring?

3 A. We did not provide a survey.

4 Q. Okay. So, you don't know for a fact whether that
5 pole is on the property or not.

6 A. I know within--beyond a reasonable doubt that it is
7 not.

8 Q. And how do you know that?

9 A. Because of the fact where we do build our lines and
10 because of the fact that that pole did not sit inside the
11 farm--fence line because--it measured 66 feet between the
12 fence lines of both sides of the road and that is the
13 dedicate--that's the road--dedicated roadway.

14 Q. Who did the measurement of 66 feet?

15 A. Our right-of-way--

16 Q. Okay. Is it required that when a person puts a
17 fence up that it actually be on their lot line?

18 A. No.

19 Q. Would it be feasible for a person who owns a
20 property right up to the roadway to put a fence line right along
21 the roadway?

22 A. Yes, if they were allowed to.

23 Q. But it's not the common practice. They could put a
24 fence wherever--

25 A. The common practice for a farmer is to put his

1 fence on the property line so he can farm everything that he's
2 entitled to farm.

3 Q. But in this case, if we look at Rocky Mountain
4 Power Exhibit 2, the fence line isn't along the roadway?

5 A. It is on the right--on the edge of the road
6 right-of-way. The road right-of-way, if you look at that, it shows
7 66 feet road right-of-way. That's the measured distance
8 between those fences on either side of the road, which is what
9 you would expect, is that the farmer would be as close to
10 the--he'd be on the road right-of-way edge of that, and that the
11 road right-of-way would not be imposed up on by the fence, but
12 it would be on the edge of it so he could farm all of his property.

13 Q. What is the purpose of a utility easement on
14 somebody's property?

15 A. The purpose is to allow the utility to have a place to
16 put their facilities in serving the subdivision.

17 Q. In Rocky Mountain Power, is it their practice to
18 utilize that easement for the location and placement of their
19 facilities?

20 A. Where they have to install facilities new to serve
21 that subdivision, yes.

22 Q. But, again, in this situation, according to this plot
23 map, a utility easement and the location of the pole is inside the
24 boundary.

25 A. No. Our pole line was pre-existing to this property.

1 Our pole line existed before this subdivision was developed.
2 We didn't have a utility easement on the farmer's property. We
3 were--placed our pole line and the road right-of-way, as we had
4 a right to do according to franchise agreement with the county.
5 We didn't have a right. We didn't have an outright easement
6 with the farmer. We didn't build there.

7 Q. Give me just a minute, Your Honor.

8 So, Mr. Stewart, in this situation, Mr. Stephens'
9 case, there was no secondary junction box like you've described
10 in Exhibit 7 installed, correct?

11 A. That's correct. We didn't have a subdivision. We
12 didn't have a need for setting a secondary junction box.

13 Q. Can you tell me in the Regulation No. 12 where it
14 states that a subdivision is only a subdivision if the developer
15 installs a secondary system?

16 A. It's in--as we go, again, to Section 4--it starts out,
17 "Extensions to Planned Developments." It says, "General.
18 Planned developments, including subdivisions" So, we
19 know anything in the planned development can include--will
20 include a subdivision. And, then, it's down in the specifics of
21 the "Allowances and Advances," the second paragraph--so, that
22 would be 4(b), second paragraph--it says, "For residential
23 developments"-- so, we were talking about subdivisions, or it
24 could be a trailer court--"the company will provide the developer
25 a maximum extension allowance of 750 for each lot. The

1 developer must pay a nonrefundable advance for all other costs
2 to make secondary voltage service available to each lot."

3 Q. So, a couple of points I want to ask you about. The
4 developer in this case is not Mr. Stephens, of this subdivision.

5 A. Correct. There is--no one came to us and this
6 never happened.

7 Q. That's not true, correct? I mean, someone did
8 come to you. Rocky Mountain Power did issue a letter to the
9 developer.

10 A. Right, but he never came to us and gave us--made
11 the request that he needed to.

12 Q. And I guess my question is: Where does it say that
13 that has to happen in order for Mr. Stephens to avail himself of
14 2(e)?

15 A. Well, it says it has to be--he has to pay us a
16 nonrefundable advance for all other costs beyond the 750 to
17 make secondary voltage available to each lot. There was--that
18 didn't happen. And therefore, again, that parallel language is
19 intentionally inserted; otherwise, it would have simply said in
20 2(e)--it would have said a new residential customer--excuse
21 me--I get dry mouth--it would have said "or new residential
22 customer builds in a subdivision." We would just end it there,
23 but we didn't end there when we filed this language. We wanted
24 to make it clear that it had to be a subdivision where secondary
25 service is available at the lot line, which ties it back to Section

1 4(b), which states as we've already discussed.

2 Q. So, let's look at 2(e), then. And I think we've
3 covered this, but I want to bring up a question you raised. So,
4 2(e) talks about a new residential customer who builds in a
5 subdivision where secondary service is available at the lot line.
6 Then--it then says, ". . . either by means of a transformer or a
7 secondary junction box"

8 A. Yes.

9 Q. So, putting aside the issue of where the lot line is
10 in this case, if we all agree--I'm not saying we have to, but for
11 purposes of this question, we all agree that the pole in this
12 situation with the existing 10kVA transformer was found to be on
13 Mr. Stephens' property inside the easement that's part of this
14 plot, then that would apply here because it says secondary
15 service available by means of a transformer, correct?

16 A. No. It ties back to the language--the subdivision
17 has to be a developed subdivision with regards to electricity.
18 The--and maybe what you're saying is maybe this wording could
19 be more explicitly clear. To me, when I wrote it, it was explicitly
20 clear. To commission staff, when they discussed it, it was
21 explicitly clear, but maybe it's not as explicitly clear as we
22 thought it was. But we filed it with very clear intent to be
23 applied in conjunction with Section 4(b).

24 Q. So, your testimony, then, is that either--
25 the language that says, ". . . either by means of a transformer or

1 a secondary junction box" isn't clear?

2 A. No. I'm suggesting you're suggesting it's not clear.

3 Q. Language where it says that the secondary service
4 is available at the lot line--can you--I guess help me understand
5 how the rules are requiring it to be actually on his property.

6 A. The--again, this is parallel language given three
7 places.

8 MS. HOGLE: Objection, Your Honor. I think the
9 language in the rule--Regulation 12 speaks for itself. The
10 language says, "at the lot line."

11 THE HEARING OFFICER: I'm going to allow the
12 question.

13 MS. HOGLE: Okay.

14 THE WITNESS: Okay.

15 THE HEARING OFFICER: Do you need to repeat
16 the question or--

17 THE WITNESS: No. I think I'm okay. Thank you,
18 Your Honor.

19 When we filed this language, we needed to give our
20 field people--they understand how to apply it. And we wanted to
21 make it--help them to explain that if you got a subdivision where
22 we haven't installed a secondary system, that this doesn't apply
23 to those new homes. It doesn't apply to new homes anywhere
24 unless they are in one of those subdivisions where we've
25 installed the secondary system.

1 BY MR. BINGHAM:

2 Q. So, you keep talking about how there's references
3 in three places that all tie together--

4 A. Yes.

5 Q. --but it's your testimony that 2(e) is for situations
6 that are different.

7 A. No. The first one I referred to is in 2(a), where it
8 talks about a residential application in a planned development
9 where secondary voltage is available at the lot line, they get the
10 350 allowance. Same application.

11 This one is if they're in that situation where they
12 would have just paid the 350 and the transformer can't serve
13 them or the secondary can't serve them, again, this is the same
14 category of customer. Those were secondary services available
15 at that line lot. We're talking about the same customers the 350
16 applies for.

17 Again, in 4(b), we're talking about the same
18 customer, those where the developer has paid a nonrefundable
19 advance for all other costs to make secondary voltage available
20 to each of those lots. So, it's the same. It's not different type.
21 It's the same.

22 MR. BINGHAM: I have no further questions, Your
23 Honor.

24 THE HEARING OFFICER: Thank you, Mr. Stewart.
25 I'd like to take a brief recess. And, then, we'll finish up with Mr.

1 Stewart.

2 (Recess taken, 10:50-11:00 a.m.)

3 THE HEARING OFFICER: Is everybody back?

4 MR. BINGHAM: Yes, Your Honor.

5 MS. HOGLE: Yes, Your Honor.

6 THE HEARING OFFICER: We'll be back on the
7 record.

8 EXAMINATION

9 BY-THE HEARING OFFICER:

10 Q. Mr. Stewart, just to remind you, you are under oath.

11 A. Okay.

12 Q. And I'd like to ask you a few questions.

13 MS. HOGLE: Your Honor, I apologize. Can I have
14 redirect?

15 THE HEARING OFFICER: Oh, I'm terribly sorry.
16 Do I not ask questions first and then you do the redirect? I--

17 MS. HOGLE: Oh, I--

18 THE HEARING OFFICER: You can have redirect,
19 but I think I go first.

20 MS. HOGLE: Okay. Go ahead.

21 THE HEARING OFFICER: Okay. All right. Okay.
22 Very good.

23 BY THE HEARING OFFICER:

24 Q. Mr. Stewart, it's my understanding, from your
25 testimony, that a survey has not been done in this situation.

1 A. The power company did not perform a survey,
2 correct.

3 Q. Okay. Do you know whether a survey has been
4 done aside from the power company?

5 A. I know that for the subdivision it appears there's a
6 survey done, because as pointed out, there is a point of
7 beginning indicated, which indicates a survey has been done.

8 Q. Okay.

9 A. I could follow on that because of the bearings of
10 the--and the lengths measured indicates a survey has also been
11 done.

12 Q. And, earlier, you testified with respect to the power
13 pole at question, that you know beyond a reasonable doubt that
14 it is not situated on Mr. Stephens' property. Could you help me
15 understand what you mean by that?

16 A. Yes. The power line, as in Exhibit--
17 Rocky Mountain Power Exhibit 2, you see that it's sitting on the
18 road side of the fence. You also see that there's a--66 feet
19 measured from the fence on the left side of the road to the
20 fence on the right side of the road, which is, as given on the
21 Exhibit 1, is the 66-foot dedicated roadway.

22 Q. Did you physically measure that roadway?

23 A. I did not.

24 Q. And, so, how do you know that that roadway is 66
25 feet across?

1 A. The right-of-way department with their software,
2 they can actually put a point on it and then draw a line across.
3 As he drew a line across and he stopped at the other fence, it
4 indicated 66 feet.

5 Q. And where is that proof? Do you have that
6 document? Is that--

7 A. Well, this is what he printed for me later. I--it
8 was--I observed him online. He was on one place and I was on
9 another. And I was able to see what he was doing. And I
10 watched him draw that line across and watched it. And it was
11 pleasing to us that it was 66, because it did come at exactly to
12 66. It didn't come up to 65 or 67, as I was watching him do it
13 online.

14 Q. Okay. What I guess is a bit confusing to me is this
15 appears to be a graphic from Google Earth--

16 A. It is.

17 Q. --which is accessible, as I'm sure you know, from
18 the internet.

19 A. Yes.

20 Q. Do you have anyone who intended to testify as to
21 that roadway width, other than this particular photograph?

22 A. No. We felt it was exhibited, the fact that that was
23 a distance from a fence as measured by that software, yes.

24 Q. Okay. So, this document--if I'm understanding you
25 correctly--was provided by another party.

1 A. By--yes, by a man--well, yes.

2 Q. Who was it provided by?

3 A. He's in our right-of-way department and his name
4 escapes me.

5 Q. And which right-of-way department?

6 A. Rocky Mountain Power's right-of-way department.

7 Q. Okay. And is he here today?

8 A. No, he is not.

9 Q. Okay. So, based on that information, you're
10 assuming the roadway is, in fact, 66 feet across.

11 A. No. The dedicated roadway is 66 feet. That's as
12 given on the plat, Exhibit 1. Right under--on the plat of 66 feet,
13 it states there's a 66-foot dedicated roadway. We measured 66
14 feet from fence line to fence line. And so, yes, we're assuming
15 that that fence line to fence line is in alignment with the
16 right-of-way.

17 Q. Thank you.

18 Also, at one point of your testimony, you stated that
19 the pole existed before Mack's Place Subdivision existed.

20 A. Yes.

21 Q. Did you install the pole?

22 A. No. Not me personally, no.

23 Q. Okay. So, help me understand how you know that
24 to be true.

25 A. Well, I could rely on Mr. Stephens' testimony, as

1 well as our own employees' testimony--well, they aren't
2 available to testify--
3 that pole line Mr. Stephens testified that transformer's been
4 there probably as long as he's been alive.

5 Q. Well, he put in a new transformer.

6 A. No. The 10kVA that he testified was already on the
7 pole serving Bradley Peterson's property was already there.
8 What happened is he--that one wasn't big enough, so he paid to
9 have that one changed out to a 25kVA transformer. So, he
10 testified that that pole preexisted the subdivision.

11 Q. Let me ask you to take a look at Regulation 12,
12 Section 2, sub (e).

13 A. Yes.

14 Q. And there's been a lot of discussion about the
15 words "at the lot line."

16 A. Yes.

17 Q. And is it correct that it's the company's position
18 that their interpretation of that phrase means "on the lot line"?

19 A. Yes, on or touching at.

20 Q. And where in that particular subsection, subsection
21 (e), including (1) and (2), does it say that "at the lot line" means
22 "on the lot line"?

23 A. It--it's--it says what it says. And like I say, we tie it
24 back to those other sections.

25 Let me--

1 Q. Remind me what those other sections are, please.

2 A. Okay. It's Section 2(a), "Extension Allowances."

3 And we talk about--the first sentence in that talks about the
4 standard extension allowance where a permanent single
5 residential application is \$1100. Then, it goes on to give--
6 there's a certain situation that may exist. And it goes on to the
7 second sentence, saying, "The extension allowance for a
8 residential application in a planned development where
9 secondary voltage service is available at the lot line is \$350.

10 We also talked about that in Regulation Section
11 4(b), where--again, where we're talking about those residential
12 developments. We talk about, "For residential developments,
13 the company will provide the developer a maximum extension
14 allowance of \$750 for each lot," and that, "The developer must
15 pay a nonrefundable advance for all other costs and [sic] make
16 secondary voltage service available to each lot."

17 When we build--have an improved subdivision,
18 where a developer's come to us and he pays to have all costs to
19 get that secondary to the lot line, we allocate a portion of that
20 \$1100 allowance to the developer--we allocate 750 of that to the
21 developer and we reserve 350 for the home builder, because the
22 developer's incurred a significant expense. And we don't need
23 to reserve the full 1100 with the individual home builders. We
24 need to reserve enough for their service. In order to reserve
25 enough for their service, we need to be able to make sure that

1 service is as close as possible to the home, which would be
2 right at the lot line.

3 Q. Mr. Stewart, are there any other parallel cites that
4 you believe give meaning to Section 2, part (e), (1) and (2)?

5 A. No. Those three cites--2(a), and, of course, 2(e)
6 and then 4(b).

7 Q. Okay. With respect to your testimony about the
8 developer and the developer's failure to pay to have the service
9 installed in a way that, under Rocky Mountain Power's
10 interpretation, might have been more favorable for Mr. Stewart
11 [sic], I'd like to ask you whether you're familiar with Rocky
12 Mountain Power Electric Service Regulation No. 2, which are the
13 definitions of various terms.

14 A. Yes.

15 Q. Okay. And are you aware that there's a definition
16 of subdivision in that regulation?

17 A. I couldn't quote it to you, but I'm aware.

18 Q. Okay. I'll go ahead and read to you what it says.
19 This is, again, Regulation No. 2. And it is definition No. 33,
20 subdivision, which states, "An area identified by file subdivision
21 plats in which a group of dwellings may be constructed at about
22 the same time."

23 A. Yes. We also state that in Regulation 4--or 12,
24 Section 4.

25 Q. So, given that particular definition and given that

1 subsection 2(e) refers to a subdivision, how would somebody
2 like Mr. Stewart [sic] know that the company intended to define
3 "subdivision" in a way--by drawing on what you have referred to
4 as parallel references?

5 A. What we did when we filed this is, we didn't just
6 state a new residential customer builds in a subdivision. Had we
7 done that, then I would agree with what I feel like's being asked.

8 What we did state, we said build in a subdivision.
9 And, then, we added a criteria there, "Where secondary service
10 is available at the lot line," which ties in those other two
11 references. Had we not done that--

12 Q. And how would one know it's tied to those other
13 references? Is there anything there that I'm not seeing, for
14 example, "as referred to in Sections . . ." and then those
15 sections are stated?

16 A. I would suggest they would--if they did not know
17 what it meant, they would have to ask the company for
18 assistance to understand that.

19 Q. Mr. Stewart, in 2008, you state that--
20 excuse me--in 2008, you filed these tariffs and you were
21 responsible for doing so and for reviewing them. Do you know
22 which docket number that was?

23 A. I believe that I have it sitting over there
24 (indicating). I can go--

25 Q. Yes, please.

1 A. --retrieve it.

2 Q. Yes, please.

3 A. It is Docket No. 08-035-T05.

4 Q. Thank you.

5 In your testimony, you referenced a franchise
6 agreement that you have. Did you happen to bring a copy of
7 that with you?

8 A. No. I don't have copies of those agreements with
9 the counties or the cities.

10 Q. Do you know if they're kept by Rocky Mountain
11 Power?

12 A. Yes. Actually, I don't know--I mean, I assume we
13 do, but--I know we renegotiate them. So, yes, they are
14 somewhere, yes.

15 Q. And the franchise agreement that you spoke about,
16 it's a franchise agreement with Morgan County. Is that correct?

17 A. I would assume so. I didn't read it, so I'm
18 assuming. I know that it's our standard practice to build in
19 county road right-of-ways and we have to have a--the right to do
20 so.

21 Q. So, when you spoke earlier about there being a
22 franchise agreement, you--you're now testifying that you're not
23 sure there is a franchise agreement.

24 A. I'm sure that we are in a legal right-of-way and we
25 have permission to be there. That's what--the right-of-way

1 department makes sure we have a legal right to be there.

2 I'm not--the nature of that agreement. As old as
3 that line is, I don't know what it would state.

4 Q. Have you actually ever read that agreement?

5 A. Not that particular--I have read franchise
6 agreements, but I have not read that county's.

7 Q. So, you, in fact, don't know whether the franchise
8 agreement gives you the authority to put the pole where you did.

9 A. I guess I could say I'm sure we have legal right to
10 be there, but the legal right--basis of that legal right, I couldn't
11 say for sure what that legal right is, no.

12 Q. So, you're assuming you have the legal right.

13 A. If no other way, we have it by a prescriptive right as
14 being as old as it is. But I assume, since we built along the
15 road, that that--
16 we build along the roads with those understandings. So, just
17 from a matter of practice, as we build power lines throughout
18 our--the company in six States, that's the standard practice. It's
19 not an ad hoc kind of thing. It's a very consistent type of thing.

20 Q. Mr. Stewart, you're aware, are you not, that the
21 claim that Mr. Stephens makes is that the language in Section
22 2, subsection (e), parts (1) and (2) should be read in a manner
23 that allow him to prevail. And he does so arguing that the plain
24 reading of the provision that I just referenced allows him to do
25 so. Your testimony today has suggested that there are a

1 number of interpretations that could be applied on to subsection
2 2(e) (1) and (2) that would disallow that. But what I haven't
3 heard you say is that a plain reading of this provision would
4 allow the company to prevail.

5 A. I believe it's a plain reading because of the words
6 that are in Section 2(e), as well as in 4(b), make it a plain
7 reading that makes it clear. Had we not stated where secondary
8 service is available at the lot line, which is parallel with the
9 other language in 2(a) and in 4(b), I don't know that it would be
10 plain. But with that wording, I believe it is a very plain reading,
11 that those sections all clearly line together--align together, and
12 that it is clear that it is only in those instances that that only
13 applies when a subdeveloper has requested service and paid all
14 costs except for \$750, which is an allowance that this language
15 applies.

16 THE HEARING OFFICER: Thank you, Mr. Stewart.

17 Ms. Hogle.

18 MS. HOGLE: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY-MS.HOGLE:

21 Q. Mr. Stewart, let me ask you a few questions about
22 the letter that is in evidence. Okay. It's February 7, 2013, I
23 believe, is Exhibit 4 for the complainant. To your knowledge,
24 did Mr. Peterson ever follow up after the company sent him the
25 letter requiring a nonrefundable above the \$750-per-lot

1 allowance according to the line extension tariff?

2 A. He did not. To my knowledge, he never came to
3 the company and followed up on that request, made that
4 request.

5 Q. Is it the company's responsibility to pay for
6 secondary voltage service availability to each lot?

7 A. No. The company's responsibility is to pay \$1100
8 total to get power to lots. If it's a single lot requesting it, they
9 get the full 1100. If it's the developer, we bifurcate, we split
10 that \$1100 into a 750 for the developer, and the customer gets
11 350. So, it's the customer's-- company's responsible to invest
12 \$1100 per lot total. And that is all.

13 Q. And in this case where it is clear and it's
14 indisputable that the developer failed to make secondary voltage
15 service to Lots 1, 2, and 3, what part of Regulation 12, then,
16 would apply to Mr. Stephens' lot?

17 A. As a residential applicant, he would be under
18 Regulation 2--Regulation 12, Section 2(a), which starts out with,
19 "The extension allowance for permanent single residential
20 applications is \$1100." And the second--then, the last sentence
21 of that paragraph says, "The applicant must advance the costs
22 exceeding the extension allowance prior to the start of
23 construction."

24 Q. And, so, the hearing officer asked you questions
25 about whether Section 2(e) even applied in this case. Can you

1 please tell me why it doesn't apply in this case to Mr. Stephens?

2 A. Because he was not an existing residential
3 customer, he was a new residential customer, and he was not a
4 new residential customer building where secondary service had
5 been made available at the lot line.

6 Q. And, to your knowledge, and as you have testified
7 here before, is that consistent with the Regulation 12, Section
8 4(b) and Regulation 12, Section 2(a), as well as the--yes, so is
9 that consistent? Is that a consistent read--

10 A. Yes.

11 Q. --plain reading of this language in Regulation 12?

12 A. Yes.

13 Q. Again, and is it your testimony that in instances
14 that have the same facts as this case, it is not the customer's
15 testimony--I mean, responsibility to pay for the availability of
16 secondary voltage service? It's either covered by the residential
17 customer or the developer.

18 A. Correct. Someone pays the cost to get secondary
19 to the lot line and--or to the home. And the company will
20 provide an allowance of \$1100 to the single customer or 750 to
21 the developer and then 350 to the single customer, but it all
22 adds up to an \$1100--an allowance to get power to serve that
23 home.

24 Q. And in this case, Mr. Stephens was given the \$1100
25 allowance--

1 A. Yes.

2 Q. --consistent with Regulation--

3 A. Yes.

4 Q. --2(a), Regulation 12, 2(a).

5 I have no further questions, Your Honor.

6 THE HEARING OFFICER: Thank you for your
7 testimony today, Mr. Stewart. You may be dismissed.

8 THE WITNESS: Thank you.

9 THE HEARING OFFICER: Typically, at this point,
10 we conclude the hearing and take the matter under advisement,
11 but given the way in which we started, I wanted to ask the
12 parties if they chose to give a closing argument. By no means
13 is that necessary, but just wanted to mention that.

14 MR. BINGHAM: Yes, Your Honor, I'd like to make a
15 brief closing argument, if I may.

16 This case, I think, is pretty simple, and we've
17 managed to complicate it pretty well.

18 THE HEARING OFFICER: Make sure your
19 microphone is on.

20 MR. BINGHAM: Sorry. This case is a simple case,
21 but we managed to complicate it quite nicely. Mr. Stephens
22 would argue that although the company would like to say that
23 2(e) under Regulation 12 has to be interpreted in conjunction
24 with 2(a) and 4(b), even if you look at those other sections,
25 there's nothing that defines what the term "available at the lot

1 line" means. There are any number of interpretations one could
2 read into that. We've argued today that it means that, in this
3 case, the power pole is on Mr. Stephens' property and therefore
4 at the lot line.

5 Even if the Commission decides that the company
6 is correct and that the power pole is on the right-of-way for the
7 road, we're talking a couple feet to the lot line. That's still at the
8 lot line, because that could be an interpretation.

9 We're talking about who bears the burden of
10 running power to the lot line. The fact of the matter is, in this
11 case, nothing was moved any closer to the lot line. They ran it
12 from the existing pole, put a new transformer on, and ran it to
13 the home, because it was already at the lot line. There was no
14 additional cost that the developer would have had to have paid
15 to move it to the lot line. There was already an existing
16 transformation facility in the form of a transformer at the lot line.

17 Mr. Stephens's contention the whole--
18 this whole case has been that Rocky Mountain Power seems to
19 want to insert its own interpretation based on its experience
20 or--but the problem with that is, as I think was illustrated by Mr.
21 Stewart's testimony, is that a lot of what they present, a lot of
22 what--the way they interpret it is very self-serving. For a
23 member of the public to come and to be able to receive power
24 from Rocky Mountain Power, they're subject to these rules and
25 regulations, but they don't have to be subject to those

1 self-serving interpretations.

2 And, so, we would urge the Commission to look at
3 the plain language in 2(e), and even looking at 2(a) and 4(b), as
4 has been talked about multiple times today, to find that the
5 phrase "available at the lot line," in conjunction with the
6 definition of "subdivision" that you pointed out during testimony,
7 Your Honor--those two things combined make it so that 2(e)
8 does apply in this case. And we'll be--leave that with the
9 Commission.

10 THE HEARING OFFICER: Thank you, Mr. Bingham.
11 Ms. Hogle.

12 MS. HOGLE: Thank you, Ms. Hearing Officer. I
13 agree with counsel for Mr. Stephens that the case is very
14 simple. I note that by Mr. Stephens' interpretation, Mr.
15 Stephens would, as an individual residential customer, would be
16 receiving service for free and this would be inconsistent with the
17 way that the company has provided service to its customers. It
18 would be the first time that the company would be held
19 responsible entirely for providing secondary voltage service to a
20 single residential customer applicant.

21 I submit to you that Rocky Mountain Power's
22 interpretation of Regulation 12 is not self-serving but rather is
23 consistent with thousands of applications that it has
24 implemented in the past. And Rocky Mountain Power urges the
25 Commission to ensure the continued application of Regulation

1 12 and the continued plain reading of Regulation 2(e),
2 specifically such that in this case, where the developer did not
3 provide for the investments necessary to be able to provide
4 secondary service to Lots 1, 2, and 3, that it is the responsibility
5 of the residential customer--in this case, Mr. Stephens--as
6 stated in Regulation 12, 2(a), I believe, that he indeed is
7 responsible and will be given an \$1100 allowance consistent
8 with Regulation 12, 2(a).

9 And finally, the--Rocky Mountain Power urges the
10 Commission to look at all of the evidence in the case.
11 Historically, the company has and does still have a right-of-way
12 department that is charged with ensuring that the company does
13 not nilly-willy install poles just anywhere it wants. There are
14 franchise agreements in place. In situations where there is a
15 subdivision with a utility easement, the company makes sure
16 that it is legally--that it has a legal right to install transformers
17 and poles and such things to make it--to ensure that its
18 customers--in this case, Mr. Peterson, for example--with respect
19 to that--that first transformer have service and that the
20 customers--
21 in this case, Mr. Stephens--who require service, that, pursuant
22 to Regulation 12, they do so in accordance with what is required
23 under Regulation 12, 2(a).

24 Thank you.

25 THE HEARING OFFICER: Thank you, everyone.

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The Commission will take this matter under advisement. And the hearing is adjourned.

(Proceedings adjourned at 11:33 a.m.)



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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



Scott M. Knight

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